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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Nehemiah Kong,

Plaintiff,

v.

**Great Wall International
Investment, Inc.,** a California
Corporation;
Bot V. Nguyen; and Does 1-10,
Defendants.

Case No. 2:18-CV-03409-R-SS

**First Amended Complaint For
Damages And Injunctive Relief
For** Violations Of: American's With
Disabilities Act; Unruh Civil Rights
Act

Plaintiff Nehemiah Kong complains of Defendants Great Wall International Investment, Inc., a California Corporation; Bot V. Nguyen; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who suffers from Polio. He uses a wheelchair for mobility. He has a specially equipped van with a ramp that deploys out of the passenger side of

1 his van.

2 2. Defendant Great Wall International Investment, Inc. owned the real
3 property located at or about 9611 Garvey Avenue, South El Monte, California,
4 in March 2018.

5 3. Defendant Great Wall International Investment, Inc. owns the real
6 property located at or about 9611 Garvey Avenue, South El Monte, California,
7 currently.

8 4. Defendant Bot V. Nguyen owned the Quynh Nhu Café located at or
9 about 9611 Garvey Avenue, South El Monte, California, in March 2018.

10 5. Defendant Bot V. Nguyen owns the Quynh Nhu Café located at or about
11 9611 Garvey Avenue, South El Monte, California, currently.

12 6. Plaintiff does not know the true names of Defendants, their business
13 capacities, their ownership connection to the property and business, or their
14 relative responsibilities in causing the access violations herein complained of,
15 and alleges a joint venture and common enterprise by all such Defendants.
16 Plaintiff is informed and believes that each of the Defendants herein,
17 including Does 1 through 10, inclusive, is responsible in some capacity for the
18 events herein alleged, or is a necessary party for obtaining appropriate relief.
19 Plaintiff will seek leave to amend when the true names, capacities,
20 connections, and responsibilities of the Defendants and Does 1 through 10,
21 inclusive, are ascertained.

22
23 **JURISDICTION & VENUE:**

24 7. This Court has subject matter jurisdiction over this action pursuant to
25 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
26 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

27 8. Pursuant to supplemental jurisdiction, an attendant and related cause
28 of action, arising from the same nucleus of operative facts and arising out of

1 the same transactions, is also brought under California's Unruh Civil Rights
2 Act, which act expressly incorporates the Americans with Disabilities Act.

3 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
4 founded on the fact that the real property which is the subject of this action is
5 located in this district and that Plaintiff's cause of action arose in this district.

6
7 **FACTUAL ALLEGATIONS:**

8 10. Plaintiff went to the Quynh Nhu Café in March 2018.

9 11. The Quynh Nhu Café is a facility open to the public, a place of public
10 accommodation, and a business establishment.

11 12. Parking spaces are one of the facilities, privileges, and advantages
12 offered by Defendants to patrons of the Quynh Nhu Café.

13 13. Unfortunately, even though there were six parking spaces marked and
14 reserved for persons with disabilities in the parking lot where the Quynh Nhu
15 Café is located during Plaintiff's visit, all the parking stalls and access aisles
16 were not level with each other because there were built up curb ramps running
17 into the access aisles.

18 14. These curb ramps caused slopes greater than 2.1%.

19 15. Additionally, the parking stalls and access aisles had slopes greater than
20 2.1%.

21 16. Currently, these curb ramps cause slopes greater than 2.1%.

22 17. Currently, the parking stalls and access aisles are not level with each
23 other and there are inaccessible slopes in both the access aisles and parking
24 stalls.

25 18. Plaintiff personally encountered these barriers.

26 19. This inaccessible parking lot denied the plaintiff full and equal access
27 and caused him difficulty, discomfort, and embarrassment.

28 20. Transaction counters are another one of the facilities, privileges, and

1 advantages offered by Defendants to patrons of the Quynh Nhu Café.

2 21. Meanwhile, even though plaintiff did not personally confront the
3 barrier, the transaction counter at the Quynh Nhu Café is more than 36 inches
4 in height. In fact, the transaction counter is 42 inches high.

5 22. There is no lowered, 36 inch portion of the transaction counter at the
6 Quynh Nhu Café for use by persons in wheelchairs.

7 23. Plaintiff plans to return and patronize the Quynh Nhu Café but will be
8 deterred from visiting until the Defendants remove the barriers.

9 24. The defendants have failed to maintain in working and useable
10 conditions those features required to provide ready access to persons with
11 disabilities.

12 25. The barriers identified above are easily removed without much
13 difficulty or expense. They are the types of barriers identified by the
14 Department of Justice as presumably readily achievable to remove and, in fact,
15 these barriers are readily achievable to remove. Moreover, there are numerous
16 alternative accommodations that could be made to provide a greater level of
17 access if complete removal were not achievable.

18 26. For example, there are numerous paint/stripe companies that will come
19 and stripe a level parking stall and access aisle and install proper signage on
20 rapid notice, with very modest expense, sometimes as low as \$300 in full
21 compliance with federal and state access standards.

22 27. Another common barrier removal project is modifying transaction
23 counters to make a portion of the counter accessible. This is a simple
24 construction task, well within the capabilities of any general contractor. The
25 task can be completed easily and for a modest price.

26 28. Plaintiff is and has been deterred from returning and patronizing the
27 Quynh Nhu Café of his knowledge of the barriers that exist. Plaintiff will,
28 nonetheless, return to assess ongoing compliance with the ADA and will

1 return to patronize the Quynh Nhu Café as a customer once the barriers are
2 removed.

3 29. Given the obvious and blatant nature of the barriers and violations
4 alleged herein, the plaintiff alleges, on information and belief, that there are
5 other violations and barriers on the site that relate to his disability. Plaintiff will
6 amend the complaint, to provide proper notice regarding the scope of this
7 lawsuit, once he conducts a site inspection. However, please be on notice that
8 the plaintiff seeks to have all barriers related to his disability remedied. See
9 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
10 encounters one barrier at a site, he can sue to have all barriers that relate to his
11 disability removed regardless of whether he personally encountered them).

12 30. Additionally, on information and belief, the plaintiff alleges that the
13 failure to remove these barriers was intentional because: (1) these particular
14 barriers are intuitive and obvious; (2) the defendants exercised control and
15 dominion over the conditions at this location and, therefore, the lack of
16 accessible facilities was not an “accident” because had the defendants
17 intended any other configuration, they had the means and ability to make the
18 change.

19
20 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
21 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiff and against all
22 defendants (42 U.S.C. section 12101, et seq.)

23 31. Plaintiff repleads and incorporates by reference, as if fully set forth
24 again herein, the allegations contained in all prior paragraphs of this
25 complaint.

26 32. Under the ADA, it is an act of discrimination to fail to ensure that the
27 privileges, advantages, accommodations, facilities, goods and services of any
28 place of public accommodation is offered on a full and equal basis by anyone

1 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
2 § 12182(a). Discrimination is defined, inter alia, as follows:

- 3 a. A failure to make reasonable modifications in policies, practices,
4 or procedures, when such modifications are necessary to afford
5 goods, services, facilities, privileges, advantages, or
6 accommodations to individuals with disabilities, unless the
7 accommodation would work a fundamental alteration of those
8 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 9 b. A failure to remove architectural barriers where such removal is
10 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
11 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
12 Appendix “D.”
- 13 c. A failure to make alterations in such a manner that, to the
14 maximum extent feasible, the altered portions of the facility are
15 readily accessible to and usable by individuals with disabilities,
16 including individuals who use wheelchairs or to ensure that, to the
17 maximum extent feasible, the path of travel to the altered area and
18 the bathrooms, telephones, and drinking fountains serving the
19 altered area, are readily accessible to and usable by individuals
20 with disabilities. 42 U.S.C. § 12183(a)(2).

21 33. Under the 1991 Standards, parking spaces and access aisles must be
22 level with surface slopes not exceeding 1:50 (2%) in all directions. 1991
23 Standards § 4.6.3. Here, the access aisle is not level and has a ramp taking up
24 part of the access aisle. Under the 2010 Standards, access aisles shall be at the
25 same level as the parking spaces they serve. Changes in level are not
26 permitted. 2010 Standards 502.4. “Access aisle are required to be nearly level
27 in all directions to provide a surface for wheelchair transfer to and from
28 vehicles.” 2010 Standards § 502.4 Advisory. Specifically, built up curb ramps

1 are not permitted to project into access aisles and parking spaces. *Id.* No more
2 than a 1:48 slope is permitted. 2010 Standards § 502.4.

3 34. Here, the failure to provide level parking is a violation of the law.

4 35. In areas used for transactions where counters have cash registers and
5 are provided for sales or distribution of goods or services to the public, at least
6 one of each type shall have a portion of the counter which is at least 36 inches
7 in length with a maximum height of 36 inches above the floor. 1991 Standards
8 § 7.2(1). Under the 2010 Standards, where the approach to the sales or service
9 counter is a parallel approach, such as in this case, there must be a portion of
10 the sales counter that is no higher than 36 inches above the floor and 36 inches
11 in width and must extend the same depth as the rest of the sales or service
12 counter top. 2010 Standards § 904.4 & 904.4.1.

13 36. Here, no such accessible counter has been provided in violation of the
14 ADA.

15 37. A public accommodation must maintain in operable working condition
16 those features of its facilities and equipment that are required to be readily
17 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

18 38. Here, the failure to ensure that the accessible facilities were available
19 and ready to be used by the plaintiff is a violation of the law.

20 39. Given its location and options, plaintiff will continue to desire to
21 patronize the Quynh Nhu Café but he has been and will continue to be
22 discriminated against due to the lack of accessible facilities and, therefore,
23 seeks injunctive relief to remove the barriers.

24
25 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
26 **RIGHTS ACT** (On behalf of plaintiff and against all defendants) (Cal Civ §
27 51-53)

28 40. Plaintiff repleads and incorporates by reference, as if fully set forth

1 again herein, the allegations contained in all prior paragraphs of this
2 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
3 that persons with disabilities are entitled to full and equal accommodations,
4 advantages, facilities, privileges, or services in all business establishment of
5 every kind whatsoever within the jurisdiction of the State of California. Cal.
6 Civ. Code §51(b).

7 41. The Unruh Act also provides that a violation of the ADA, or of California
8 state accessibility regulations, is a violation of the Unruh Act. Cal. Civ. Code,
9 § 51(f); Arnold v. United Artists Theatre Circuit, Inc., 866 F.Supp. 433, 439
10 (N.D.Cal.1994).

11 42. Defendants’ acts and omissions, as herein alleged, have violated the
12 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
13 rights to full and equal use of the accommodations, advantages, facilities,
14 privileges, or services offered.

15 43. Defendants’ acts and omissions, as herein alleged, have also violated
16 the Unruh Act by denying, or aiding or inciting the denial of, Plaintiff’s right to
17 equal access arising from the provisions of the ADA (see Plaintiff’s First Cause
18 of Action).

19 44. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
20 discomfort or embarrassment for the plaintiff, the defendants are also each
21 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
22 (c).)

23
24 **PRAYER:**

25 Wherefore, Plaintiff prays that this Court award damages and provide
26 relief as follows:

27 1. For injunctive relief, compelling Defendants to comply with the
28 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the

1 plaintiff is not invoking section 55 of the California Civil Code and is not
2 seeking injunctive relief under the Disabled Persons Act at all.

3 2. Damages under the Unruh Civil Rights Act, which provides for actual
4 damages and a statutory minimum of \$4,000.

5 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
6 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

7
8 Dated: August 2, 2018

CENTER FOR DISABILITY ACCESS

9
10 By: /s/ Elliott Montgomery

11 Elliott Montgomery

12 Attorney for plaintiff
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